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THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO :17546 of 2005

DATED:09-08-2005

Between:

VKA Constructions, Engineer & Contractors, a Partnership firm rep by Managing Partner K.R. Vijaya Karan,
R/o 16-5-247, Outside Dabeerpura, Hyderabad.

..... PETITIONER

AND

1 The State of Andhra Pradesh, Secretariat Building, Saifabad,

Hyderabad, rep by Secretary and 5 others

.....RESPONDENTS

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HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO:17546 of 2005

ORDER:

This writ petition is filed by the petitioner, who is a Contractor aggrieved by the action of the respondent-authorities in determining the contract exercising the power under Cause 60 (a) of PS-2 A.P. Departmental Standard Specifications (APDSS).

2. It is stated by the petitioner that he was a successful tenderer for execution of certain road-work from Km 0/0 to Km 6/0 in respect of Miralam to Himayath Sagar Road. The agreement was entered into on 20-01-2005 and the work is to be completed within a period of six months i.e., by 20th July, 2005. According to the petitioner, the respondent-authorities had proposed certain alterations and additional works, and as no proper approvals were granted by the respondent-authorities, the petitioner could not proceed with the work. Therefore, the petitioner submitted a letter dated 05-07-2005 seeking to determine the contract and pay the amount to which the petitioner is entitled for the works executed by him. But contrary to the request made by the petitioner, the respondent-authorities passed the impugned order dated 15-07-2005 determining the contract in terms of Clause 60 (a) by APDSS which will have the effect of not only forfeiting the earnest money, but also denial of payment for the works executed by the petitioner.

3. The learned counsel for the petitioner, at the time of hearing, contended that as per the terms and conditions of the agreement, if there is any delay or work did not proceed as per the schedule in terms of clause 26.2 of the terms and conditions of the contract, the respondent-authorities are obligated to issue a notice to speed up the work so as to be inconformity with the schedule and if the Contractor neglects to comply with such demand within a period of seven days after receipt of such notice, the respondents shall, then or at any time thereafter, take suitable action in accordance with clause 60 of APDSS. Therefore, the impugned action of the authorities in determining the contract is in violation of the said clause which contemplates a prior notice, and therefore, the impugned order is liable to be quashed.

4. The learned Government Pleader, however, contended that the petitioner did

not carryout the works as per the schedule in spite of the demands by the department, and in addition, the petitioner submitted a letter dated 05-07-2005 seeking determination of the contract, therefore, there was no option for the respondent except to determine the contract in terms of clause 60 of APDSS. Therefore, the learned Government Pleader sought to contend that as the issue in dispute relates to a contract, the same could not be decided in the present writ petition.

5. Heard both sides and considered the material on record.

6. The entire dispute in this writ petition is subject matter of a contract and its determination. Whether the said determination is in terms of the contract or not is a matter requires elaborate enquiry after production of evidence, therefore, the same could not be adjudicated upon while exercising jurisdiction under Article 226 of the Constitution of India. Therefore, this Court declines to interfere with the matter in question.

7 . Accordingly, the writ petition is disposed of directing the petitioner to approach the Civil Court, if he is so advised.

8. The writ petition is accordingly disposed of. No order as to costs.

S.ANANDA REDDY, J

09th August, 2005

NOTE:

Furnish C.C. by two days.

B/o.

SKM